

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 119 of 1999

in

SPECIAL CIVIL APPLICATION No 9552 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and Sd/-

MR.JUSTICE A.L.DAVE

Sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgements?	Yes
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2.	To be referred to the Reporter or not?	No
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3.	Whether Their Lordships wish to see the fair copy of the judgement?	No
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4.	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?	No
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5.	Whether it is to be circulated to the Civil Judge?	No
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LAXMIBEN MALABHAI

Versus

GUJARAT SHEEP & WOOL DEV. CORPN. LTD.

Appearance:

MR HK RATHOD for Appellants

M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 05/05/99

(Per: C.K.Thakkar, J.)

ADMITTED. Mr.P.M.Thakkar, Senior Advocate of Thakkar Associates appears and waives service of Notice on behalf of respondents. In the facts and circumstances of the case, the matter is taken up for final disposal today.

2. This appeal is filed against summary dismissal of Special Civil Application No.9552 of 1998 by the learned single Judge on 23.12.1998.

3. The Appellants - original petitioners filed the above petition for issuing an appropriate writ, direction or order quashing and setting aside the decision to retrench the petitioners by the Gujarat Sheep & Wool Development Corporation Ltd., Gandhinagar (respondents herein) being illegal and contrary to the provisions of Sections 33 and 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") and to grant all consequential benefits. During the pendency and final disposal of the petition, a prayer was also made by directing the respondents not to retrench any of the workmen or terminate services of the petitioners by maintaining status quo.

4. The petition was filed on 16.11.1998. It was the case of the petitioners that they were not paid wages in accordance with law and they had, therefore, requested the authorities to pay them wages which were paid to other permanent employees. It was also the case of the petitioners that they were in service since 10 to 20 years, and as such they were entitled to all the benefits available to other similarly situated employees. Since the legitimate and legal demand of the petitioners was not accepted, they decided to go on strike. It was asserted by the petitioners that, with a view to punish and penalise the petitioners, a decision was taken on 06.10.1998 to terminate the services of all the petitioners and orders were passed. They were, however, not effected and were kept in abeyance. According to the petitioners, on 16.11.1998, a decision was taken to refer the matter to the Industrial Tribunal, Rajkot. Immediately, on the next date, i.e. 18.11.1998, termination orders, which were passed on 6.10.1998, were implemented. The said action was clearly illegal and contrary to the provisions of Sections 33 and 9-A read with Schedule IV of the Act. According to the petitioners, on 16.11.1998, they came to know that a

decision for termination of their services had already been taken on 14.11.1998 and hence a prayer was made to the learned Single Judge to direct the respondent Corporation to maintain status quo. The learned single Judge, however, did not grant the relief.

5. By the impugned order, the learned single Judge dismissed the petition. In paragraph 3 of the order, the learned single Judge observed;

"I have considered the rival contentions.

Section 33 of the Industrial Disputes Act puts an embargo on the employer to alter to the prejudice of the workmen concerned the condition of service during the pendency of any conciliation proceeding or any industrial dispute without express permission in writing of the authority before which the proceeding is pending. In the instant case, as the decision with respect to the change in service condition was taken even prior to the date of reference i.e. 16.11.1998, in my view, no permission was required to be obtained under Section 33 of the Industrial Disputes Act."

6. We have heard Mr.Rathod, learned Counsel for the Appellants. He submitted that the order passed by the learned Single Judge is inconsistent with the provisions of the Act and contrary to various decisions of the Apex Court. For that, our attention was invited to Section 9-A read with Schedule IV and Sections 33 and 33-A of the Act. Attention of the Court was also invited to the decisions of the Hon.'ble Supreme Court in NORTH BROOK JUTE CO. LTD. v. THEIR WORKMEN: AIR 1960 SC 879; BHAVNAGAR MUNICIPALITY v. ALIBHAI KARIMBHAI: AIR 1977 SC 1229 and CHIEF CONSERVATOR OF FOREST v. JAGANNATH MARUTI KONDHARE; AIR 1996 SC 2898. It was submitted that the learned single Judge by recording a finding in paragraph 3 of the order, virtually disposed of the matter against the Appellants at this stage. Even if the learned Single Judge thought it fit not to enter into larger question, he ought not to have recorded a finding that the service condition was not altered by the Corporation as the decision was taken prior to the date of reference. According to Mr.Rathod, the relevant date was not the date of giving the notice of change but actual termination and, according to him, that date was 17.11.1998. Before that, on 16.11.1998, a reference was already made to the Industrial Tribunal, Rajkot. The action was, therefore, illegal and unlawful.

7. Mr.Thakkar fairly conceded that so far as the

observations and findings recorded in paragraph 3 by the learned single Judge are concerned, he does not support them. He stated that he has no objection if the said finding is set aside by the Division Bench and the appropriate authority is directed to decide the question in accordance with law. He, however, submitted that the question sought to be agitated by appellants in the present proceedings may not be decided by this Court in exercise of the powers under Article 226 of the Constitution of India. Instead, appropriate forum under the Act may be directed to decide the said controversy.

8. In the facts and circumstances of the case, in our opinion, ends of justice would be met if we set aside the findings recorded by the learned single Judge in paragraph 3 of the judgment extracted hereinabove. We direct the appropriate forum to decide the question regarding validity or otherwise of termination of services of the appellants by the Corporation in accordance with law. We express no opinion on merits of the matter. It is open to all the parties to raise all contentions available to them before the appropriate forum. Since the Appellants are out of employment, the appropriate authority will decide the question as expeditiously as possible.

9. With the above observations, L.P.A. is partly allowed. In the facts and circumstances of the case, no order as to costs.

(KMG Thilake) #####